IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3298 OF 2005

Shri Arackal Joseph Chacko ..Petitioner.

Versus

Commandant Air Defense & Ors. ..Respondents.

Mr. S.S. Kulkarni for the Petitioner.

Mr.Ajaymisar & Co. for Respondent No.2- Caveator.

Mr. Rajiv Chavan with Akhile Kaushik for the Respondents 3 and 4.

CORAM : S. A. BOBDE, J.

DATED : 12TH JULY, 2005.

P.C.:

1. Rule. Rule made returnable forthwith. Mr. Ajaymisar waives notice for Respondent No.2 -Caveator. Mr. Rajiv Chavan waives notice for Respondent Nos.3 & 4. Heard by consent.

2. The trial court has refused to entertain the

petitioner's Application for proceeding against the respondents, committing civil contempt of the court. The petitioner had made this Application on the basis of an alleged oral undertaking. The trial court has rejected this Application on the ground that such an Application may be made to the High Court.

3. Admittedly, and it is also clear from the order of the trial court, that even though the Court has taken note of the contentions of both the sides, as to whether there was or was not any oral undertaking, there is no finding recorded as to whether such an undertaking was given or not. It is only after recording such a finding the trial court should have made the order, it has made. The trial court lost sight of the fact that even if this court's jurisdiction is invoked under section 10 of the Contempt of Courts Act, 1971, it would not be possible for this court to take cognizance of such an alleged undertaking unless the trial court gives a finding as to whether there was such an undertaking or not.

4. Under these circumstances, the order impugned in this petition is set aside and the matter is remanded back to the trial court for recording,

whether there was such an undertaking or not. Thereafter, the trial court may pass appropriate orders in accordance with law. Prima facie there appears to be nothing wrong in the order of the trial court that jurisdiction to punish for civil contempt of the subordinate court is vested in this court under section 10 of the Contempt of Courts Act, 1971.

5. The trial court may decide the matter within four weeks from the date the parties appear before him. Parties are directed to appear before it on 21st July, 2005.

12.07.2005 (S.A.BOBDE,J.)

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